



Paper No. 12

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OFFICE OF PETITIONS

In re Application of
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Application No. 09/864,599
Filed: May 24, 2001
Attorney Docket No. N/A
For: INFORMATION DELIVERY
SYSTEM

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed January 6, 2003 and supplemented on January 28, 2003, to revive the above-identified application. In addition, the decision will address a petition entitled, "PETITION TO ENTER DRAWINGS," filed January 30, 2002. The January 30, 2002 petition could not be decided until the application was in active status. The January 30, 2002 petition will be treated under 37 CFR 1.53(e).

The petition under 37 CFR 1.137(b) to revive the above-identified application is **GRANTED**.

The petition under 37 CFR 1.53(e) to enter Figures 5-9 is **DISMISSED**.

This application was held abandoned for failure to respond in a timely manner to The Notice to File Corrected Application Papers, mailed July 24, 2001, which required petitioner to file substitute drawings in compliance with 37 CFR 1.84 by September 24, 2001. This period was extendable under 37 CFR 1.136(a). The Office has no record of receiving substitute drawings for Figures 1-4 until September 26, 2002, which is after the September 24, 2001 deadline for reply. Accordingly, the above-identified application became abandoned on September 25, 2001. A Notice of Abandonment was mailed on July 5, 2002.

Petitioners have met the requirements of 37 CFR 1.137(b). Therefore, the January 6, 2003/January 28, 2003 petition under 37 CFR 1.137(b) is granted.

Regarding the January 30, 2002 petition to enter drawings, petitioner has not carried his burden of proof to show Figures 5-9 were filed on May 24, 2001.

The application was deposited on May 24, 2001. On July 24, 2001, the Office of Initial Patent Examination mailed a "Notice to File Corrected Application Papers" requiring substitute drawings in compliance with 37 CFR 1.84 and informing petition that Figures 5-9 appeared to have been omitted.

In response to the Notice, petitioner filed the present petition on January 30, 2002. This filing was well beyond the 2 month non-extendable period for reply set forth in the July 24, 2001 Notice. Nevertheless, the undersigned will address the substance of petitioner's argument to accord a May 24, 2001 filing date to Figures 5-9.

Petitioner requests a May 24, 2001 filing date for Figures 5-9 on the basis that the allegedly omitted figures were received in the Patent and Trademark Office (PTO) on May 24, 2001.

In support, the petition is accompanied by a copy of applicant's postcard receipt showing an Office of Initial Patent Examination generated bar code listing May 24, 2001 as the date of receipt.

A properly itemized return postcard constitutes *prima facie* evidence that the items were filed on the date stamped thereon. However, a postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. MPEP 503. The itemized postcard in this case was not properly itemized. The return postcard in this case does not mention the number of drawing figures in the specification. Therefore, the Office has no way of verifying what specifically was filed on May 24, 2001.

As stated in MPEP 503, "[M]erely listing on the postcard..."patent application" will not serve as a proper receipt for each of the required components of an application...."

Since Figures 5-9 were not among the papers filed on May 24, 2001, the application cannot be accorded a May 24, 2001 filing date with those figures as a part of the original disclosure of this application.

The petition under 37 CFR 1.53 to accord a May 24, 2001 filing date to Figures 5-9 is dismissed.

Of course, applicant may submit Figures 5-9 in the form of an amendment (see 37 CFR 1.121) for consideration by the examiner to determine whether or not the figures contain new matter compared to the original specification and drawings filed on May 24, 2001.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 24, 2001. Substitute Figures 1-4, filed September 26, 2002, will be used for processing purposes.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.



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